1944

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File No. Govt. of India II/44 Legal Department.

B **BRANCH**

Subject:— Rules and Notifications under the Government of India Act, 1935

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C O N T E N T S.

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Sr.No.	R.I./O.No.	Subject	Pages.
		Government of India Act, 1935.	
1	U.R. to H G.O.No. 4-Confl. dt.5.1.44	Whether items Nationality and Domicile in the requisition from reg. the port of the Dir. of Industries are discriminatory, and - whether they contravene the provisions of S III (1)(b).	1-3
2	L.D. letter No 172 dated. 10.1.44.	S.69(1)(a) Disqualifications under.	5-6
3	U.R. to R.D.No.2030 dt- 17.3.44	S.241(2)(b) Notification under --	7-10
4	U.R. to P. & S.D.NO. 2505,date.14/44.44	S.241(2)(b) -- ---X	11-13
5	U.R. to P.& S.D.No. 3184,dt.29.4.44	S.266(3)	15-17
6	U.R. to P.W.D.No. 3724,dt.24.5.44	S.241 (1)(b) [illegible]	19-22
7	U.R. to R.D.No. 3814,dt.26.5.44	Notification under B.L.R.Code, 1879 and Notification cancelling G.N.R.D. NO.3796/38 dt. 22.1.36	23-26
8	U.R. to P.& S.D. No.3603,dt.19.5.44	Whether Rules 3(d) and 4(1), B.C.S., C & R. Rules are ultra vires the S. III (1)(b).	27-30
9	U.R. to P. & S.D.No. 3948,dt.2.6.44.	S.241(1)(b) Notification under-	31-33
10	U.R. TO R.D.No.85-L dt.25.10.44.	Modifying G.N.R.D.No.7133/39(d) dt. 20.5.44.	35-36

K S R
6/7

Office of the R.L.A.

The post of the Director of Industries is a Provincia one. Items 16 and 17 in the requisition ~~from~~ form for the recruitment of candidates for appointment to this post, as settled by P. & S.D., read as follows:-

16. Nationality ..... British subject or subject of any State in India (preference being given to British subject of the Bombay Province).

17. Domicile. ..... British or Indian.

The question is whether the items as settled are discriminatory in effect and contravene the provisions of section 111(1)(b) of the Government of India Act,1935.

2. Section 111(1)(b) provides that a British subject domiciled in the United Kingdom shall be exempt from the operation of so much of any Federal or Provincial law as imposes by reference to place of birth, race,descent, language, religion, domicile, residence or ~~xxx~~ duration of residence, any disability, liability, restriction or condition in regard to travel, residence, the acquisition, holding or disposal of property, the holding of public office, or the carrying on of any occupation, trade, business or profession. Section 117 enacts that the foregoing provisions of this Chapter shall apply in relation to any ordinance, order, by-law, rule or regulation passed or made after the passing of this Act and having by virtue of any existing Indian law, or of any law of the Federal or Provincial Legislature, the force of law as they apply in relation to Federal and Provincial laws, but, save as aforesaid, ~~xxxix~~ nothing in those provisions shall affect the operation of any existing Indian law. This section ha been necessitated by the definitions enacted in the Act. Sections 111-116 refer to the provisions of any Provincial or Federal law. If however under the rule-making powers contained in enactments in force these rules are made to achieve the purpose which it is the intention of Chapter III of the Government of India Act, 1935, they would not

seem to be hit by the invalidating provisions as they cannot be described to be either a Provincial or a Federal law. Section 117 has been devised to meet that lacuna.

3. Rule 4 of the Bombay Civil Services Classification and ~~Rxxx~~ Recruitment Rules, 1939, made in exercise of the powers conferred by section 241 and 255 of the Government of India Act, 1935, lays down that in making appointments to Provincial or Subordinate Services perference shall be given to the natives of the Province of Bombay. The expression "native of the Provimnce of Bombay" has been defined in rule ~~4~~ 3(d) as a person who at the date of his appointment has domicile in the Province of Bombay, or in an Indian State lying within the geogrephical limits of the Province of Bombay and specified in the notification of the Government of Bombay, Political and Services Department No 1955/34 dated 12th January 1942, and who is either a British subject or, being a non-British subject, is a person eligible to hold any civil office in connection with affairs of the Province of Bombay by virtue of a declaration issued under section 262(2) of the Act. These rules are statutory and form part of the Provincial law. Rule 4 compels a perference in favour of British subjects having a domicile in the Province of Bombay. It is true that section ~~298~~ x 298 of the Government of India Act, 1935, enacts that no subject of His Majesty domiciled in India shall on grounds only of religion, place of birth, descent, colour or any of them be ineligible for office under the Crown in India, but since domicile is not one of the grounds precluding ineligibility, Rule 4 ~~xxxxxxx~~ cannot be regarded as being in conflict with that section and preference can justifiably be given to British subjects domiciled in the Province of Bombay vis-a-vis

those domiciled in India. Such preference cannot however be restricted to British Indian subjects only but must be extended to all British subjects domiciled in the Province of Bombay. On the other hand no such preference is sustainable against British subjects domiciled in the United Kingdom who are given special protection under section 111(1)(b). The Recruitment Rules though are subject to the overriding operation of this section where it applies.

4. In the circumstances the items settled by P.& S.D. are not quite in order. The words "of the Bombay Province" against item 16 are not very apt for they suggest consideration of domicile and not of nationality with which the item deals. If these words are omitted the item as settled would be in order and in no way repugnant to section 111 of the Government of India Act. As regards item 17 the wording most appropriate would be -

"17. Domicile. ..... United Kingdom or India (preference in the ~~kxkk~~ latter case being given to domicile in the Province of Bombay)".

Id/-

Remembrnacer of Legal Affairs.

U.R. to G.D.No.4-Confl, dated the 5th January 1944.

R.D.P.
6/7/56

S.C.

No.172.

Legal Department,
Bombay Castle, 10th January 1944.

From

P.N.Kaos, Esquire, Bar-at-law, I.C.S.,
Secretary to Government;

To

The Resident for Kolhapur and the Deccan States.

Subject:- Information about disqualifications under section 69(1)(a) of the Government of India Act, 1935.

Sir,

With reference to your letter Dy.No.P-4270/43, dated the 19th November 1943, addressed to Chief Secretary to the Government of Bombay, Political and Services Department, on the above subject, I am directed to state that Government Pleaders and Public Prosecutors are holders of offices of profit under the Crown in India within the meaning of section 69(1)(a) of the Government of India Act, 1935.

2. Village officers are servants of the Crown in India. Since stipendiary village officers are referred to in the said letter, they also will be holders of offices of the profit under the Crown and will be disqualified under section 69(1)(a).

3. As regards watandar village officers, "watandar" has been defined in section 4 of the Bombay Hereditary Offices Act, 1874 (Bom.III of 1874) to mean a person having a hereditary interest in a watan and a hereditary office has been defined to mean every office held hereditarily for the performance of duties connected with the administration or collection of the public revenue, or with the village police, or with the settlement o boundaries, or other matters of civil administra-

administration. Since under section 23 the Collector can assign watan property or the profits thereof towards the emoluments of officiators only, officiating watandar village officers will be holders of offices of profit under the Crown in India and therefore disqualified under section 69(1)(a) of the Government of India Act, 1935. The non-officiating watandar village officers will not be holding offices of profit and as such will not be disqualified.

4. Copies of Bombay Act I of 1937 and Bombay X of 1940 are sent herewith.

Yours obedient servant,

Id/-

Secretary to Government,
Legal Department.

R.D.P.
6/7/46

S.C.

Office of the S.L.A.

A revised draft notification is sent herewith.

2. Rule 9 of the rules in question provides that the Collector shall record in the register immediately on receipt all notices of withdrawals by sureties. It is presumed that the Prant Officer should likewise record in the register to be kept by him in respect of talatis and japtidars all notices of withdrawals by sureties - (Please see form in Schedule A). Rule 9 has, therefore been, amended to provide accordingly. The R.D. is requested to verify if the presumption is correct before issue of the revised notification.

Id/-

Remembrancer of Legal Affairs.

U.R. to R.D.,No.2030,dated the 17th March 1944.

R.D.P.
6/7/56

S.C.

Office of the R.L.A.

A revised draft notification is sent herewith.

2. The second paragraph of section 133 of the Bombay Land Revenue Code, 1879, provides that every sanad shall be executed on behalf of the Crown by such officer as may from time to time be lawfully empowered to execute the same. Government Resolution, Home Department No.5940/3-II dated the 1st April 1937 issued under section 175(3) of the Government of India Act, 1935, provides for the execution of contracts and assurances of property. Entry 24(d) provides for appointment of a Special Officer for execution of sanads granted under Section 133 of the Bombay Land Revenue Code, 1879. Consequently reference to section 19 of the Code is not correct and has been deleted from the revised draft notification.

3. Government Notification, Revenue Department No. 3796/28 dated the 22nd January 1936 should be cancelled separately. The requisite draft notification in this behalf is sent herewith. It should be issued simultaneously with the proposed notification.

Id/-

25/5

For Remembrancer of Legal Affairs.

U.R. to R.D.No.3814,dated the 26th May 1944.

R.D.P.
6/7/56

5.C.

No.106/44-Pets.
Government of India,
Home Department.

From

D.C.Das, Esquire, I.C.S.,
Deputy Secretary to the Government of India.

To

The Chief Secretary to the Government of Bombay,
Political and Services Department.

New Delhi, the 21st April, 1944.

Subject:- Question whether rules 3(d) and 4(1) of the Bombay Civil Services Classification and Recruitment Rules are ultra vires of section 111(1)(b) of the Government of India Act,

Sir,

With reference to your letter No.1586/34-D, dated the 16th March 1944, I am directed to say that from a copy of the pamphlet of the competitive examinations held in the United Kingdom in 1936 for recruitment to the xax services of the Administrative group it appears that Indians are not eligible for appointment to (i) the Foreign Office and Diplomatic Service and (ii) to the Colonial Service and the Intelligence Officer grade in the Department of Overseas Trade; but the Government of India have no definite information as to whether there are any restrictions on the employment of British subjects domiciled in India in any public office in the United Kingdom.

2. The Government of India have had occasion recently to examine the question whether the provision regarding the domicile in the recruitment rules to the All-India Services was Ultra vires of section 111(1) of the Government of India Act, 1935. In their opinion the conjoint effect of sections 111 and 117 of the Government of India Act, 1935, read with the definition of the expression "existing Indian Law" in section 311(2) thereof is that if in any rule made before the passing of the Act any disability to the holding of any public office was imposed by reference to birth, race, descent, domicile, residence, etc., it will continue to have force But if any such disability is imposed in any rule made after the passing of that Act, it will be inoperative only in respect of a British subject domiciled in the United Kingdom. If, however, by any law of the United Kingdom any such disability has been imposed on any British subject domiciled in British India, it is permissible to impose a similar disability by the rules made in India in respect of British subjects domiciled in the United Kingdom.

3. Since the provision in the rules for recruitment to the various public services in India requiring candidate to be domiciled in India has been in existence in an unaltered form from a date prior to the passing of the Government India Act, 1935, Government of India considered that the provision in question was not ultra vires of section 111(1) thereof. The fact that the recruitment

rules for the various public services are, in general issued and notified from time to time as fresh rules, does not, constitute a sufficient ground for treating any such rules, issued after the passing of the Government of India Act, as having been made after the passing of the Act, within the meaning of section 117 thereof, since the periodical issue involves merely a republication if the rules previously made with the incorporation of the alterations nfor the particular year or occasion and that it would only be the alterations for the particular year or occasion which would represent a new making of rules.

4. In view however of the wording of section 111 and 117, and of section 241 which does not provide for any statutory rules to be made for recruitment to the services as section 96B(2) of the old x Act did, the question was not pursued further.

I have the honour to be,
Sir,
Your most obedient servant,

Sd/- D.C.Das,
Deputy Secretary to the Government of India.

R.D.P.
6/7/56

S.C.

Office of the R.L.A.

The draft at page 2, as amended, is in order.

2. In the absence of clear words to that effect in the enabling enactment, no rule can be made with retrospective effect. Nor is it necessary to do so from the practical point of view, since no vacancy has yet been filled up.

Id/-

Remembrancer of Legal Affairs.

U.H. to P.& S.D.No.3948, dated the 2nd June 1944.

R.D.P.
6/7/56

S.C.

Office of the R.L.G.

The notification under section 92(1) of the Government of India Act, 1935,No.7133/39(d), dated 20-5-44 (page 7 of Reprint of Act) applied the Bombay Growth of Foodcrops Act, 1944, to the partially excluded areas in the Province. Section1(2) of the Bombay Growth of Foodcrops Act, 1944, however, provides that it shall come into force in any area of the Province (including partially exculded areas, by virtue of the notification under section 92(1) of the Government of India Act, 1935) only on such date as the Provincial Government may by notification in the Official Gazette appoint in that behalf. Since Point Mahal and the partially excluded areas in Thana District have not been included among the areas in the Schedule to G.M.R.D.No.7133/39,dated 20-5-44 (page 5 of Reprint) in which the Act has been brought into force, the Act has not been brought into force in the partially excluded areas of Point Mahal and the Thana District. It is not therefore necessary to modify G.M.,R.D.,No. 7133/39(d) dated the 20th May 1944 for excluding the areas in question from its application and no erratum is called for.

Id/-

Remembrancer of Legal Affairs.

U.R. to R.D.7 No. 85-L ,dated 25th October 1944.

R.D.P.
6/7/56

S.C.